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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of Joint Petition of MCI )  
WorldCom Communications, Inc., Brooks )  
Fiber Communications of New York, Inc., ) WC Docket No. 03- 81  
and Verizon New York, Inc., Pursuant to )  
Section 252(e)(5) of the Communications )  
Act for Expedited Preemption of the )  
Jurisdiction of the New York Public Service )  
Commission Regarding Interpretation and )  
Enforcement of Interconnection Agreements )

**JOINT PETITION OF MCI WORLDCOM COMMUNICATIONS, INC.,  
BROOKS FIBER COMMUNICATIONS OF NEW YORK, INC.,  
AND VERIZON NEW YORK INC.**

Lisa R. Youngers  
Kecia B. Lewis  
WorldCom, Inc.  
1133 19th Street N.W.  
Washington, D.C. 20036

John M. Goodman  
Attorney for Verizon New York Inc.  
1300 I Street, N.W.  
Washington, D.C. 20005

Dated: March 20, 2003

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of Joint Petition of MCI )  
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**JOINT PETITION OF MCI WORLDCOM COMMUNICATIONS, INC.,  
BROOKS FIBER COMMUNICATIONS OF NEW YORK, INC.,  
AND VERIZON NEW YORK INC.**

MCI WorldCom Communications, Inc. f/k/a MFS Intelenet of New York (“MFS”) and Brooks Fiber Communications of New York, Inc. (“Brooks Fiber”) and Verizon New York Inc. (“Verizon”), by their attorneys, and pursuant to section 252(e)(5) of the Telecommunications Act of 1996, as amended (the “Act”),<sup>1</sup> and section 51.803 of the Federal Communications Commission’s (the “FCC” or “Commission”) rules,<sup>2</sup> respectfully and jointly petition the Commission to preempt on an expedited basis the jurisdiction of the New York Public Service Commission (“NY PSC”) to interpret and enforce the interconnection agreements (“Agreements”) between Verizon and each of MFS and Brooks Fiber with respect to the effect of

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<sup>1</sup> 47 U.S.C. § 252(e)(5).

<sup>2</sup> 47 C.F.R. § 51.803.

the Commission's *ISP Remand Order*<sup>3</sup> on provisions requiring payment of reciprocal compensation and provisions allowing for amendment of the Agreements upon a change in law.

## **I. The Parties.**

MFS and Brooks Fiber are wholly owned subsidiaries of WorldCom, Inc. ("WorldCom"). Verizon is an incumbent local exchange carrier in the State of New York. Verizon and MFS executed an interconnection agreement in June 1999 (attached hereto as Ex. 1). The Agreement was based on a pre-existing agreement between Verizon and ACC National Telecom Corp. ("ACC") that MFS had opted into under 47 U.S.C. 252(i). Brooks Fiber opted into the same ACC agreement in September 1999 (attached hereto as **Ex. 2**). Thus, this case involves two identical agreements.

The Agreements contain reciprocal compensation provisions. The parties billed and paid reciprocal compensation for calls to Internet service providers ("ISPs") under the Agreements and NY PSC precedent until June 14, 2001. On or about that date, Verizon ceased paying reciprocal compensation for calls to ISPs at the rates provided by the Agreements and **NY** PSC precedent and instead began paying pursuant to the compensation regime established by the *ISP Remand Order*.

## **II. Background of the Dispute.**

This case began at the **NY** PSC. On March 5, 2002, Verizon filed petitions at the NY PSC in **NY** PSC cases 02-C-0294 and 02-C-0295 against MFS and Brooks Fiber (hereafter collectively "WorldCom") alleging, among other things, that they were obligated to adopt

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<sup>3</sup> Order on Remand & Report & Order, *In re Implementation of the Local Competition Provisions in the Telecoms. Act of 1996, Inter-carrier Comp. for ISP-bound Traffic*, 16 F.C.C.R. 9151 (2001) ("*ISP Remand Order*").

contract amendments to the Agreements, and that such amendments would be effective retroactive to June 14, 2001. Verizon asserted that these amendments were required pursuant to the *ISP Remand Order*.

Verizon contends that the Agreements automatically incorporate the intercarrier compensation regime in the *ISP Remand Order* and that the *ISP Remand Order* constitutes a change of law triggering an obligation to amend the Agreement under paragraph 34.0. Paragraph 34.0 provides:

This agreement is subject to change or modification as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction or as may be required by either Party based on any significant change in FCC or PSC rules which may impact the provision of Unbundled Network Elements, Wholesale Services and other facilities and services provided under this Agreement or the rights and obligations of the Parties under the Act.

WorldCom objected to Verizon's petitions at the *NY* PSC. WorldCom submits that the Agreements did not automatically incorporate the intercarrier compensation regime in the *ISP Remand Order*, that the *ISP Remand Order* does not constitute a change of law triggering **an** obligation to amend the Agreements under paragraph 34.0 of the Agreements, and that the parties remain obligated to continue paying reciprocal compensation under the terms of the Agreements and *Opinion No. 99-10* of the *NY* PSC.<sup>4</sup> WorldCom further asserts that, even if the *ISP Remand Order* did effectuate a change of law requiring **an** amendment to the Agreement, any such amendment would only be effective after its execution and cannot be retroactive. WorldCom counterclaimed at the *NY* PSC, asserting that Verizon was required to pay

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<sup>4</sup> NY PSC Case 99-C-0529, *Proceeding on the Motion of the Comm'n to Reexamine Reciprocal Compensation* (Aug. 26, 1999) (attached hereto as **Ex. 3**).

WorldCom amounts due in reciprocal compensation under the rates in the Agreements and *NY* PSC orders for traffic already delivered to ISPs, plus interest. WorldCom also seeks to require Verizon to comply with its ongoing obligations under the Agreements.

The *NY* PSC declined to resolve the dispute. On August 7, 2002, the New York Department of Public Service (“*NY* DPS”), which functions as the *NY* PSC’s staff, issued a letter to Verizon stating that the *NY* PSC “will not address . . . six dispute resolution petitions,” including these two, and that “because adequate, alternative forums exist, the Department will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic.”<sup>5</sup>

### **III. The *NY* PSC’s Failure to Act and the Substantially Similar *MCImetro* Dispute.**

The *NY* PSC has expressly refused to act as to these disputes. The Commission’s authority to assert jurisdiction under section 252(e)(5) of the Act is premised on a finding that a state commission has “failed to act” in “any proceeding or other matter under [section 252].” In this dispute, the *NY* PSC has announced its refusal to address the contract interpretation questions between the parties described above, thereby failing to act under section 252(e)(5).

The posture of this case and the grounds for preemption make a strong ground for preemption. The Commission recently preempted the *NY* PSC’s jurisdiction pursuant to section 252(e)(5) with regard to a substantially similar dispute between Verizon and another WorldCom subsidiary, *MCImetro Access Transmission Services LLC*. *In the Matter of MCImetro Access Transmission Services LLC Petition for Preemption of the Jurisdiction of the New York Public Service Commission Pursuant to Section 252(e)(5) of the Communications Act of 1934, as*

*Amended*, CC Docket No. 02-283 (rel. Nov. 26, 2002) (“*MCImetro*”). In preempting the *NY* PSC, the Commission determined that the very August 7, 2002 letter of the *NY* PSC referenced above established that the *NY* PSC had failed to act and required preemption under section 252(e)(5). In that letter, the *NY* PSC specifically stated that it would not address the two disputes addressed in this Joint Petition.

#### **IV. The Commission Should Preempt the NY PSC.**

Because of the *NY* PSC’s refusal to interpret and enforce the parties’ Agreements, grant of this Joint Petition would be consistent with the requirements of sections 251 and 252(e)(5).

The Act is clear. Section 252(e)(5) requires the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which the state commission “fails to act to carry out its responsibility” under section 252. Section 252(e)(5) provides:

If a State commission fails to act to carry out its responsibility under this section *in any proceeding or other matter under this section*, then the Commission shall issue an order preempting the State commission’s jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.<sup>6</sup>

Indeed, in addition to *MCImetro*, the Commission has expressly acknowledged its authority to preempt a state’s jurisdiction in these instances?

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<sup>5</sup> Letter of Janet Hand Deixler, Secretary, New York DPS, to Gayton P. Gomez, Esq., Verizon New York Inc., dated August 7, 2002 (“*NY PSC Letter*”) (attached hereto as Ex. 4).

<sup>6</sup> 47 U.S.C. § 252(e)(5) (emphasis added).

<sup>7</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 11628, ¶ 1285 (1996) (subsequent history omitted); see also *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia*

## **V. The Parties Have Agreed on the Scope of Their Dispute.**

The parties have attempted to resolve their dispute. Their negotiations were unsuccessful. However, they narrowed their dispute to these three issues:

- (i) For the period beginning on June 14, 2001, did the Agreements between the parties automatically incorporate the intercarrier compensation regime of the *ISP Remand Order* as of the effective date of that order without requiring further action by the parties?
- (ii) Did the *ISP Remand Order* constitute a change of law under paragraph 34.0 of the Agreements that triggered an obligation to amend the agreements in order to incorporate the intercarrier compensation regime of the *ISP Remand Order*?
- (iii) If it did, would that regime become effective as of June 14, 2001, on the date that the parties executed the amendment, or on some other date?

The parties have further agreed that, if the Commission agrees to preempt the ~~NY~~ PSC, WorldCom will file a complaint that bifurcates the issues of liability and damages pursuant to section 1.722(b) of the Commission's rules, and Verizon will not object to bifurcation. Verizon will not seek recovery in this proceeding of any reciprocal compensation paid to WorldCom relating to the period before June 14, 2001.<sup>8</sup>

## **VI. Expedited Treatment is Necessary.**

The parties request expedited treatment of this Petition. The Commission's consideration of the merits here does not require 90 days for a decision to preempt the NY PSC's jurisdiction. The facts here are simple. The parties have a dispute over the effect of the ~~ZSP~~ *Remand Order* on their Agreements. Attempts to reach a negotiated resolution have failed. The

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*State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 F.C.C.R. 11,277 (2000).

<sup>8</sup> By participating in this proceeding, WorldCom does not waive the protections afforded by the automatic stay under the bankruptcy code.

Commission has found that interpretation and enforcement of interconnection agreements is within the responsibility granted to the states under section 252 of the Act. The NY PSC has refused to act to resolve these disputes, and the Commission already has preempted the *NY* PSC in a substantially similar case.

In these circumstances, the Commission need not take three months to decide to preempt the *NY* PSC's jurisdiction and to initiate a proceeding to address the merits. Expedited treatment is also appropriate here because the parties to the dispute have jointly petitioned the Commission for a preemption order.

## **VII. Conclusion.**

For the foregoing reasons, the parties respectfully request that the Commission grant this Joint Petition to preempt the *NY* PSC's jurisdiction to interpret and enforce the Agreements as set forth herein. The issues on which preemption should be granted are:

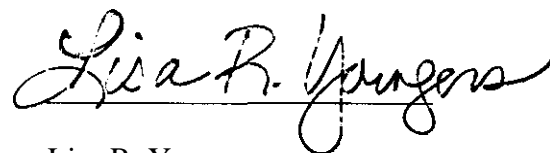
- (i) For the period beginning on June 14, 2001, did the Agreements between the parties automatically incorporate the intercarrier compensation regime of the *ISP Remand Order* as of the effective date of that order without requiring further action by the parties?
- (ii) Did the *ISP Remand Order* constitute a change of law under paragraph 34.0 of the Agreements that triggered an obligation to amend the agreements in order to incorporate the intercarrier compensation regime of the *ISP Remand Order*?
- (iii) If it did, would that regime become effective as of June 14, 2001, on the date that the parties executed the amendment, or on some other date?

WorldCom also seeks recovery of the payments it claims Verizon has wrongly withheld. If the Commission agrees to preempt the *NY* PSC, WorldCom will file a complaint that bifurcates the issues of liability and damages pursuant to section 1.722(b) of the



Commission's rules, and Verizon will not object to bifurcation. In addition, the parties will move to consolidate this dispute with the *MCImetro* dispute

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa R. Youngers".

Lisa R. Youngers  
Kecia B. Lewis  
WorldCom, Inc.  
1133 19th Street N.W.  
Washington, D.C. 20036

A handwritten signature in cursive script that reads "John M. Goodman".

John M. Goodman  
Attorney for Verizon New York Inc.  
1300 I Street, N.W.  
Washington, D.C. 20005

Dated: March 20, 2003

## Certificate of Service

I, Lonzena Rogers, hereby certify, that on this twentieth day of March, **2003**, I have caused a true and correct copy of MCI WorldCom Communications, Inc. f/k/a MFS Internet of New York ("MFS") and Brooks Fiber Communications of New York, Inc. ("Brooks Fiber") Petition in the matter of WC Docket No. 03-\_\_\_\_\_ to be served on the following:

Marlene H. Dortch \*  
Secretary  
Federal Communications Commission  
**445** Twelfth Street, SW  
Washington, DC **20554**

Janet Hand Deixler +  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, NY **12223**

Tamara Preiss \*  
Chief  
Competition Pricing Division  
Wireline Competition Bureau  
Federal Communications Commission  
**445** Twelfth Street, SW  
Washington, DC **20554**

John M. Goodman \*  
Verizon Communications  
**1300** Eye Street, NW  
Suite **400** West  
Washington, DC **20005-3314**

Qualex International \*  
Portals II  
Federal Communications Commission  
**445** Twelfth Street, SW  
Washington, DC **20554**

  
Lonzena Rogers

\* Denotes Hand Delivery

+ Denotes FedEx

**Affidavit of  
Curtis L. Groves  
WorldCom**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of Joint Petition of MCI )  
WorldCom Communications, Inc., Brooks )  
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Jurisdiction of the New York Public Service )  
Commission Regarding Interpretation and )  
Enforcement of Interconnection )  
Agreements

**AFFIDAVIT OF CURTIS GROVES**

1. My names is Curtis L. Groves. I am Senior Attorney, Law and Public Policy for WorldCom, Inc. (“WorldCom”). WorldCom is the parent company of MCI WorldCom Communications, Inc. f/k/a MFS Intelenet of New York (“MFS”) and Brooks Fiber Communications of New York, Inc. (“Brooks Fiber”). My duties include representing WorldCom and its subsidiaries in all regulatory matters before the New York Public Service Commission (“NY PSC”). I have been employed by WorldCom and previously MCI Telecommunications Corporation since 1996 and have represented WorldCom in New York regulatory matters since 1997.

2. The purpose of this Affidavit is *to* support the facts outlined in the joint preemption petition (“Joint Petition”) filed by MFS, Brooks Fiber and Verizon New York Inc. (“Verizon”) in this matter.

3. Verizon is an incumbent local exchange carrier in the State of New York. Verizon and MFS executed an interconnection agreement in June 1999. The

agreement was based on a pre-existing agreement between Verizon and ACC National Telecom Corp. (“ACC”) that MFS had opted into under 47 U.S.C. 252(i). Brooks Fiber opted into the same ACC agreement in September 1999. Thus, there are two effectively identical interconnection agreements (the “Agreements”) at issue in this proceeding.

4. On March 5, 2002, Verizon filed petitions at the **NY** PSC against MFS and Brooks Fiber (hereafter collectively “WorldCom”) alleging, among other things, that they were obligated to adopt contract amendments to the Agreements, and that such amendments would be effective retroactive to June 14, 2001. Verizon asserted that these amendments were required pursuant to the Federal Communications Commission’s *ISP Remand Order*.<sup>1</sup>

5. WorldCom objected to Verizon’s petitions at the **NY** PSC.

6. The **NY** PSC declined to resolve the dispute. On August 7, 2002, the New York Department of Public Service (“NY DPS”), which functions as the **NY** PSC’s staff, issued a letter to Verizon stating that the **NY** PSC “will not address . . . six dispute resolution provisions,” including these two, and that “because adequate, alternative forums exist, the Department will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic.”<sup>2</sup>

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<sup>1</sup> Order on Remand & Report & Order, *In re Implementation of the Local Competition Provisions in the Telecoms. Act of 1996, Intercarrier Comp. for ISP-bound Traffic*, 16 F.C.C.R. 9151 (2001).

<sup>2</sup> Letter of Janet Hand Deixler, Secretary, New York DPS, to Gayton P. Gomez, Esq., Verizon New York Inc., dated August 7, 2002 (“NY PSC Letter”). A copy of this letter is attached to the parties’ Joint Petition as Ex. 4.

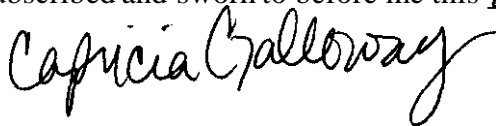
7. WorldCom and Verizon have attempted to resolve their dispute. While they did not succeed, they narrowed their dispute in this instance to these three issues:

- (i) For the period beginning on June 14, 2001, did the Agreements between the parties automatically incorporate the intercarrier compensation regime of the *ISP Remand Order* as of the effective date of that order without requiring further action by the parties?
- (ii) Did the *ISP Remand Order* constitute a change of law under paragraph 34.0 of the Agreements that triggered an obligation to amend the agreements in order to incorporate the intercarrier compensation regime of the *ISP Remand Order*?
- (iii) If it did, would that regime become effective as of June 14, 2001, on the date that the parties executed the amendment, or on some other date?

I, Curtis L. Groves, hereby attest and state that the statements contained herein are true and correct to the best of my knowledge, information, and belief.

  
Curtis L. Groves

Subscribed and sworn to before me this 12<sup>th</sup> day of March, 2003,



Capricia **Galloway**  
Notary **Public**, District of **Columbia**  
My Commission Expires **07-15-2006**

**Exhibit 1**  
**MFS - BA Agreement**

**Exhibit 1**  
**MFS - BA Agreement**





Bell Atlantic  
1095 Avenue of the Americas  
Room 3745  
New York, New York 10036

Sandra Dilorio Thorn  
General Counsel, NY

212-395-6515 (phons)  
212-768-1568 (fax)

November 9, 1999

**BY HAND**

**MS.** Debra Renner  
Acting Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Interconnection Agreement between  
Bell Atlantic - New York and MCI WORLDCOM Communications**

Dear Secretary Renner:

New York Telephone Company, d/b/a Bell Atlantic - New York ("BA-NY"), is herewith filing an Interconnection Agreement between BA-NY and **MCI** WORLDCOM Communications, Inc., f/k/a MFS Intelenet of New York, Inc. ("MFS"), governing interconnection arrangements in the State of New York.

Please note that the enclosed agreement supersedes the agreement between BA-NY and **MFS** that was filed with the Commission on July 8, 1996 in Case 96-C-0608 and approved by the Commission on October 3, 1996.

Pursuant to the Commission's Notice of Procedures issued June 14, 1996, copies of this Agreement and this letter are being served on all active parties in Cases 95-C-0657 and 93-C-

Ms. Debra Renner  
November 9, 1999  
Page 2

0103, as well as all telecommunications carriers from which BNY has received requests for interconnection, services or network elements pursuant to **47 U.S.C. § 252**.

MFS is represented by:

Kimberly A. Scardino, Esq.  
MCI WORLDCOM Communications, Inc.  
5 International Drive  
Rye Brook, NY 10573  
telephone: (914) 312-6124  
fax: (914) 312-2287

If you have any questions regarding this matter, please feel free to call me.

Respectfully submitted,

A handwritten signature in black ink that reads "Sandra Dilorio Thorn". The signature is written in a cursive, flowing style.

Sandra Dilorio Thorn

Enclosure

cc: Kimberly A. Scardino, Esq. (By U.S. Mail)  
Service List in Cases 95-C-0657 and 93-C-0103 (By U.S. Mail)  
All Telecommunications Carriers Requesting Interconnection (By U.S. Mail)

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
COMMUNICATIONS ACT**

**Dated as of June 24,1999**

**by and between**

**NEW YORK TELEPHONE COMPANY,  
d/b/a  
BELL ATLANTIC -NEW YORK,**

**and**

**MCI WOFUDCOM COMMUNICATIONS,INC.**





Bell Atlantic  
1095 Avenue of the Americas  
Room 3745  
New York, New York 10036

Sandra Dilorio Thorn  
General Counsel, NY

212-395-6515 (phone)  
212-768-7568 (fax)

November 9, 1999

**BY HAND**

Ms. Debra Renner  
Acting Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Interconnection Agreement between  
Bell Atlantic - New York and MCI WORLDCOM Communications**

~~Dear~~ Secretary Renner:

New York Telephone Company, d/b/a Bell Atlantic - New York ("BA-NY"), is herewith filing an Interconnection Agreement between BA-NY and **MCI WORLDCOM** Communications, Inc., f/k/a MFS Intelenet of New York, Inc. ("MFS"), governing interconnection arrangements in the State of New York.

Please note that the enclosed agreement supersedes the agreement between BA-NY and MFS that was filed with the Commission on July 8, 1996 in Case 96-C-0608 and approved by the Commission on October 3, 1996.

Pursuant to the Commission's Notice of Procedures issued June 14, 1996, copies of ~~this~~ Agreement and ~~this~~ letter ~~are~~ being served on all active parties in Cases 95-C-0657 and 93-C-

Ms. Debra Renner  
November 9, 1999  
Page 2

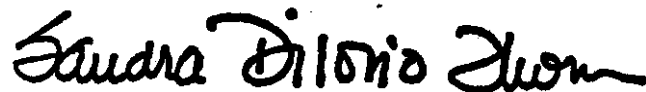
0103, **as** well **as** all telecommunications carriers from which BA-NY has received a request for interconnection, services or network elements pursuant to 47 U.S.C. § 252.

MFS is represented by:

Kimberly A. Scardino, Esq.  
MCI WORLDCOM Communications, Inc.  
5 International Drive  
Rye Brook, NY **10573**  
telephone: (914) 312-6124  
fax: (914) 312-2287

If you have any questions regarding **this** matter, please feel **free** to call me.

Respectfully submitted,

A handwritten signature in black ink that reads "Sandra Dilorio Thorn". The signature is written in a cursive, flowing style.

**Sandra Dilorio** Thorn

Enclosure

cc: Kimberly A. **Scardino**, Esq. (By U.S. Mail)  
~~Service List~~ in Cases 95-C-0657 and 93-C-0103 (By U.S. Mail)  
All Telecommunications Carriers Requesting Interconnection (By **U.S.** Mail)

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
COMMUNICATIONS ACT**

**Dated as of June 24, 1999**

**by and between**

**NEW YORK TELEPHONE COMPANY,  
d/b/a  
BELL ATLANTIC - NEW YORK,**

**and**

**MCI WORLDCOM COMMUNICATIONS, INC.**





## INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE COMMUNICATIONS ACT

This Interconnection Agreement (this "Agreement"), under Sections 251 and 252 of the Communications Act, **as** amended by the Telecommunications Act of 1996 (the "Act"), is effective **as** of the 24<sup>th</sup> day of June, 1999 (the "Effective Date"), by and between New **York** Telephone Company, d/b/a Bell Atlantic - New York ("BA"), a New **York** corporation with offices at 1095 Avenue of the Americas, New York, New **York**, 10036, and MCI WORLDCOM Communications, Inc., formerly **known as** MFS Intelenet of New York, Inc. ("MFS"), a Delaware corporation with offices at 33 Whitehall Street, New York, New **York** 10004 (each, a "Party" and, collectively, the "Parties").

WHEREAS, MFS has requested, pursuant to Section 252(i) of the Act, that BA make available to **MFS** Interconnection, services and unbundled Network Elements upon the same terms and conditions **as** provided in the Interconnection Agreement between ACC National Telecom Corp. and BA, dated **as** of November 11, 1997 for New **York**, approved by the New York Public Service Commission ("Commission") under Section 252 of the Act, copies of which agreement are attached hereto **as** Appendix 1 (the "Separate Agreement"); and

WHEREAS, BA has undertaken to make such terms and conditions available to **MFS** hereby only because of, and to the extent required by, Section 252(i) of the Act;

NOW, THEREFORE, in consideration of the mutual provisions contained herein, MFS and BA hereby agree **as** follows:

### 1.0 Incorporation of Separate Agreement and Appendix 2 by Reference

1.1 Except **as** expressly stated herein, the terms and conditions of the Separate Agreement, **as** it is in effect on the date hereof **after** giving effect to operation of law, and of Appendix 2 attached hereto, **are** incorporated by reference in their entirety herein and form an integral part of **this** Agreement.

1.2 References in the Separate Agreement to ACC National Telecom Corp. or to ANTC shall for purposes of **this** Agreement be deemed to refer to **MFS**.

1.3 References in the Separate Agreement to the "Effective Date", the date of effectiveness thereof **and** like provisions shall for purposes of **this** Agreement **be** deemed to refer to the date first written above. **Unless** terminated earlier in accordance with the terms of the Separate Agreement, **this** Agreement shall continue **in** effect until the Separate Agreement expires or is otherwise terminated.

1.4 **All** references in the Separate Agreement to "800/888" shall for purposes of **this** Agreement be deemed to refer to "800/888/877".